

**ANNUAL REPORT  
OF THE  
NATURAL RESOURCES STUDY  
COMMITTEE**



**Indiana Legislative Services Agency  
200 W. Washington Street, Suite 301  
Indianapolis, Indiana 46204**

**November, 2010**

# INDIANA LEGISLATIVE COUNCIL

## 2010

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## NATURAL RESOURCES STUDY COMMITTEE

### Membership Roster

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Robert Bischoff  
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#### Staff

Steve Wenning  
Attorney for the Committee

Bernadette Bartlett  
Fiscal Analyst for the Committee

A copy of this report is available on the Internet. Reports, minutes, and notices are organized by committee. This report and other documents for this Committee can be accessed from the General Assembly Homepage at <http://www.in.gov/legislative/>.

## **I. STATUTORY AND LEGISLATIVE COUNCIL DIRECTIVES**

The Indiana General Assembly enacted legislation directing the Committee to do the following:

- Conduct a continuing study of the laws relating to the Department of Natural Resources (DNR) to the end that legislation may be proposed to better serve the citizens of Indiana. The Committee is to consult with representatives of the Department of Natural Resources and citizens of Indiana for the purpose of proposing legislation to accomplish the following:
  - (a) repeal of outmoded or unnecessary laws;
  - (b) consolidation and restatement of existing laws;
  - (c) improved coordination of state laws with federal laws; and
  - (d) addition or amendment of laws that will further the purpose for which the Department of Natural Resources was created. (IC 2-5-5-3)
- Advise and assist the Department of Natural Resources in programming its activities and in developing a long-range plan for land acquisition, capital improvement, and development of facilities. (IC 2-5-5-3)
- Oversee the Water Resource Management Program under IC 14-25-7. (IC 14-25-7-16)

The Legislative Council assigned the following additional responsibilities to the Committee:

Whether new or amended statutes or rules are appropriate concerning the following:

- (1) The safety of miners who could be affected by coal bed methane extraction activities;
- (2) Coal bed methane well spacing, unit, and bonding requirements;
- (3) The relative interests with respect to real property of:
  - (A) the owner of the right to coal bed methane
  - (B) the owner or owners of the surface rights and other mineral rights
- (4) Requirements with respect to real property for the owner of the right to coal bed methane to give notice of coal bed methane extraction activities to the owners of the surface rights and other mineral rights;
- (5) Requirements for the issuance of permits for the extraction of coal bed methane, including public notice of the filing of permit applications;
- (6) Requirements for the protection of surface water and ground water from any potential effects of coal bed methane extraction activities;
- (7) Encouragement of the development of coal bed methane that adequately takes into account the protection of commercially minable coal resources;
- (8) The right of the person, who is entitled to develop a well for oil and gas purposes with respect to real property and who is not the owner of the surface rights, to enter the property for extraction activities and the responsibility of that person to pay damages or compensation to the owner of the surface rights;
- (9) The adequacy of conventional oil and gas statutes and rules to protect the owners of

the surface rights to real property, the public, and commercially minable coal resources;  
(10) Any other issue the committee considers appropriate.

## **II. INTRODUCTION AND REASONS FOR STUDY**

The Natural Resources Study Committee met to carry out its statutory responsibilities under IC 2-5-5-3 and IC 14-25-7-16 and the responsibilities assigned by the Legislative Council.

## **III. SUMMARY OF WORK PROGRAM**

The Committee met three times during the 2010 interim. Meetings were held as follows:

1. August 23 and 24, 2010, at Pokagon State Park, Angola, Indiana.
2. September 27 and 28, 2010, at McCormick's State Park, Spencer, Indiana.
3. October 13, 2010, at the Indiana State Museum, Indianapolis, Indiana.

## **IV. SUMMARY OF TESTIMONY**

The Committee heard testimony from DNR professionals, members of the Indiana General Assembly, representatives from various associations, private citizens, and other interested parties. An overview of their testimony is presented below.

### **Update on Recent Natural Resources Issues**

Chris Smith, Director, Legislative Relations, DNR, provided an update on several issues before DNR in the previous year, including:

- (1) The number of visitors to DNR properties is expected to decline in 2010.
- (2) DNR has been taking steps to reduce its expenditures.
- (3) Management of Roush Lake has been transferred from the Division of State Parks to the Division of Fish and Wildlife. The transfer was made to be able to receive certain federal funds.
- (4) Review of legislation passed during the 2010 legislative session that impacts natural resources.
- (5) Proposed changes to rules for deer hunting, furbearer possession, taking of catfish, exotic animals, raccoon and opossum season changes, wildlife rehabilitation permits, and group piers.
- (6) Proposed statutory changes to:
  - Sell excess nursery stock to out of state buyers for reforestation programs.
  - Adopt the Coast Guard standards for personal flotation devices for children

under the age of 13.

- Sell alcohol at some of DNR's inns and restaurants.

(7) Geotubes will be installed to prevent siltation at the Brookville marina when funding is available.

(8) DNR has looked into adopting a tele-check program to allow hunters to electronically submit information on turkey and deer. However, the start up cost is too high to implement at this time.

## **State Parks & Indiana State Museum**

Ted Bohman, Park Manager, DNR and Dwight Brooks, Park Manager, DNR, presented information on the history, development, and facilities at Pokagon State Park and McCormick's Creek State Park. Tom King, Interim President, Indiana State Museum spoke about efforts to stabilize the governance of the museum and make the museum a quasi-independent entity, and about the museum's collections.

## **Lake Management Work Group (LMWG)**

Rep. Nancy Demowski, Chair, LMWG, discussed the history, responsibilities, and accomplishments of the LMWG. Robert Meeks, Member, LMWG, explained how the Lake and River Enhancement (LARE) program is funded. He also explained that the state has transferred money from the fund to other state priorities.

## **Update on Indiana Water Resources**

Ron McAhron, Deputy Director, DNR, said that the Division of Water studies and maintains information on surface and ground water availability. The Division works with the Federal Emergency Management Agency to modify flood plain map revisions. The state enters into contracts for sale of water from state reservoirs. Several state reservoirs have excess water capacity. He discussed the implementation of the Great Lakes St. Lawrence River Basin Water Resources Compact. He presented the recommendations of the Water Resources Task Force.

## **Invasive Species Council**

Steve Yaninek, Chair, Invasive Species Council, stated that the Invasive Species Council was created by the legislature in 2009. The Council held its first meeting in August 2010. A series of work groups have been established to address specific concerns and promote awareness activities. Phil Marshall, State Entomologist, DNR, discussed new invasive species that could impact Indiana in the near future. The public can receive information on invasive species from county extension agents or by contacting a toll-free number.

## **Asian Carp**

John Davis, Deputy Director, DNR, provided information on the escape of Asian carp from Arkansas fish ponds over ten years ago and their migration up the Mississippi River Basin. He explained a project completed in Allen County to stop Asian carp from reaching the Great Lakes through a cross-over point. Kay Nelson, Northwest Indiana Forum, presented information on the Chicago Area Water System (CAWS), which is a major corridor for transporting materials and products in northwest Indiana to the Mississippi River Basin. Closing the CAWS locks would hurt Indiana businesses and severely reduce flood protection in the Little Calumet River Basin. John Goss, Chair, Asian Carp Regional Coordinating Committee, explained that he is organizing federal, state, and local actions to stop Asian carp from entering the Great Lakes. Methods of control include physical barriers, electron barriers, and research to block reproduction. There may be emerging markets to use Asian carp as fertilizer or pet food. Bryan Kalb, Fisheries Biologist, Duke Energy, stated that the Wabash River has been studied extensively since 1967. Asian carp have been collected near Duke's power generating stations since 1995. The number of Asian carp caught began to increase in 2004. The presence of Asian carp presents concerns for boater safety and the effect they will have on native species.

## **Sustainable Natural Resources Advisory Committee**

Jennifer Boyle Warner, Executive Director, Indiana Association of Soil and Water Conservation Districts, and Angela Hughes, The Nature Conservancy, presented information regarding establishing an advisory committee to examine establishing a consistent funding source for natural resources in Indiana. The state of Iowa went through a similar process and created a funding source for their sustainable natural resource efforts.

## **Old Growth Forest Management**

John Davis, Deputy Director, DNR, stated that there are about 150,000 acres of forests owed by the state. He provided information on the different types of state properties and their role in timber, recreation, land management, and erosion control. Jack Seifert, State Forester, DNR, discussed DNR's work with state universities to examine all the impacts of forests. David Haberman, President, Indiana Forest Alliance, talked about how historically Indiana's forest system had been compromised, the advantages that older forests have over newer forests, and the need for larger tracts of old growth forests. John Flannelly and Tom Hougham, Indiana Forest Alliance, talked about the increased biodiversity and rare species that need old growth forests. Sidney Collins, Heartland, stated that the remnants of Indiana's old growth forests should be expanded. Jack Corpuz, Ruffed Grouse Society, stated that the overall age of the state's forests is increasing. Nature preserves and state parks can be used to set aside land for old growth forests. Some forests need to be cut to regenerate land for certain wildlife species.

## Coal Bed Methane (CBM)

Ron McAhron, Deputy Director, DNR, explained that CBM has been gaining national interest as an alternative source of natural gas. He explained the geology where CBM is found, techniques to recover CBM, and DNR's regulatory functions. He recommended policy changes to aid DNR in its regulatory authority. Nat Noland, Indiana Coal Council, discussed coal miner safety and the ownership of the CBM. He stated that CBM is embedded in the coal and that many states have decided that the CBM goes with the owner of the coal. Steve Boljen, Chief Geologist, Norwest Corporation, explained the process of hydro-fracking a CBM well. The well can cause hazardous conditions for later mining of the coal. Tommy Sutton, Vice President, Triad Mining, stated that federal regulations require mines to avoid areas that have a well. A CBM well that is not properly plugged can create a column of gas, which if hit can cause an explosion. Tom Hite, Pulse Energy Systems, explained the differences between coal and gas ownership. Since coal companies are liable for escaped CBM, Pulse Energy Systems determined that CBM is owned by the coal company. Rod Taylor, Indiana Oil and Gas Association, stated that most CBM is extracted in areas without active coal mines. Removing the CBM helps both mine safety and the environment. He stated that CBM is owned by the landowner unless it is specifically granted in a lease. Shawn Gallagher, Indiana Oil and Gas Association, stated that permanent drilling records should be kept with DNR. Drilling requirements should be less stringent when the well is in an unminable coal seam. Larry Neely, Maverick Energy, stated that CBM resources should be jointly managed by the coal companies and the companies that extract the CBM. Mark Palmer, Taft Stettinius & Hollister LLP, stated that the state appellate court has asked the legislature for guidance to resolve the CBM ownership issue. The development of recovering CBM in the state will be inhibited unless the ownership issue is resolved. One natural resource should not prevent another natural resource from being developed. Steve Miller, Pioneer Oil Company, stated that most CBM comes from a coal seam that is not typically mined. Extracting the CBM and water from the coal makes mining the coal easier. Don Villwock, President, Indiana Farm Bureau, said that states have resolved the ownership of CBM several different ways. A landowner should not be determined to have given away a resource unless there was a specific conveyance. The laws concerning the compensation for property damage caused by the extraction process need to be clarified to cover damages, like soil compaction and land contamination. T. Kyle Buehner, Land Agent, stated that CBM, which is created through a biogenetic process, is a regenerating resource. Developing this resource could have a great economic impact for the state. Rusty Deckard, President, Sullivan County Farm Bureau, stated that CBM is a valuable product. Any resolution of the CBM issue must protect landowners' rights and the safety of miners. Jeff Hawkins, Hawkins Law PC, explained that since CBM was not economically viable until the 1990's, the courts must look at the intent of the parties on a case by case basis. The courts must also look at the technology that was available at the time the grant was made. Representative Bruce Borders, House District 45 and Senator John Waterman, Senate District 39, stated that the ownership of CBM is an important issue to the residents of southern Indiana. The rights to CBM should be negotiated between the landowners and CBM gas operators. Lonnie Bedmore, Citizen, expressed concern that if CBM is part of the coal, then if he signed a lease to allow a coal company to mine the coal, the coal company could place a gas rig on his property. Bob Kraft, Indiana Farm Bureau, stated that the rights of the landowner need to be protected. The solution



that the legislature comes up with for CBM will set the legal precedent for the next mineral that is discovered. Randy Haymaker, Hoosier Energy REMC, discussed REMC's plans to construct a generating plant using CBM wells on their own property. The ownership issue of CBM needs to be resolved before this type of plant can be constructed in other areas. Hershel McDivitt, Director, Division of Oil and Gas, DNR, said that to respond to the quickly changing technology in the CBM area, DNR needs to be given authority to adopt emergency rules.

## **Ginseng**

Col. Mike Crider, Director, Division of Law Enforcement, DNR, stated that ginseng is a valuable product and that DNR and the U.S. Fish and Wildlife service had completed a two year investigation into the activities of ginseng harvesters and dealers. Cary Floyd, Project Coordinator, Division of Nature Preserves, DNR, spoke on the requirements to verify the viability and sustainability of the ginseng in the state. He also discussed the potential effects of poaching ginseng on future harvests. The following ginseng dealers addressed the Committee: Dick Lambert, Old Mill Root Company; Brent Duncan, Duncan's Botanical Products; Mike Bell, Bell's Botanicals and Trading; Scott Howser, Scott's Hardware; Tom Bond, Bond Wool, Fur, Ginseng; and John Howser. They all expressed concern with how DNR handled the investigation of ginseng dealers and the issuance of search warrants. Their testimony also included information on the ginseng industry, replenishment of ginseng plants, interaction with DNR officials, and the need for clear laws and guidance from DNR.

## **V. COMMITTEE FINDINGS AND RECOMMENDATIONS**

The Committee made the following findings:

- There is an abundance of coal bed methane (CBM) in Indiana.
- CBM is a valuable resource that should be developed.
- All gas well records need to be permanently stored and authority given to a state agency to develop well drilling and plugging standards that allow CBM wells to be developed and that promote coal mine safety.

The Committee made the following recommendations:

- DNR should permanently maintain detailed records on the drilling and plugging of oil, natural gas, and CBM wells.
- DNR should be given rule making authority to establish well drilling and plugging

standards that allow CBM wells to be developed and that promote coal mine safety.

The Committee adopted this final report by consent.

## WITNESS LIST

Lonnie Bedmore	Citizen
Mike Bell	Bell's Botanicals and Trading
Ted Bohman	Pokagon State Park, DNR
Steve Boljen	Norwest Corporation
Tom Bond	Bond Wool, Fur, Ginseng
Rep. Bruce Borders	House District 45
Dwight Brooks	McCormick's Creek State Park, DNR
T. Kyle Buehner	Land Agent
Sidney Collins	Heartwood
Jack Corpuz	Ruffed Grouse Society
Mike Crider	Division of Law Enforcement, DNR
John Davis	Deputy Director, DNR
Rusty Deckard	Sullivan County Farm Bureau
Rep. Nancy Dembowski	Lake Management Work Group
Brent Duncan	Duncan's Botanical Products
John Flannelly	Indiana Forest Alliance
Cary Floyd	Division of Nature Preserves, DNR
Shawn Gallagher	Indiana Oil and Gas Association
John Goss	Asian Carp Regional Coordinating Committee
David Haberman	Indiana Forest Alliance
Jeff Hawkins	Hawkins Law PC
Randy Haymaker	Hoosier Energy REMC
Tom Hite	Pulse Energy Systems
Tom Hougham	Indiana Forest Alliance
John Howser	Ginseng Dealer
Scott Howser	Scott's Hardware
Angela Hughes	The Nature Conservancy
Bryan Kalb	Duke Energy
Tom King	Interim President, Indiana State Museum
Bob Kraft	Indiana Farm Bureau
Dick Lambert	Old Mill Root Company
Phil Marshall	State Entomologist, DNR
Ron McAhron	Deputy Director, DNR
Hershel McDivitt	Division of Oil and Gas, DNR
Robert Meeks	Lake Management Work Group
Steve Miller	Pioneer Oil Company
Larry Neely	Maverick Energy
Kay Nelson	Northwest Indiana Forum
Nat Noland	Indiana Coal Council
Mark Palmer	Taft Stettinius & Hollister LLP
Jack Seifert	State Forester, DNR
Chris Smith	Legislative Relations, DNR

Tommy Sutton

Rod Taylor

Don Villwock

Jennifer Boyle Warner

Sen. John Waterman

Steve Yaninek

Triad Mining

Indiana Oil and Gas Association

Indiana Farm Bureau

Indiana Association of Soil and Water Conservation Districts

Senate District 39

Invasive Species Council